IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION Nos.21892 and 22147 of 2004

and

WRIT PETITION No. 245 of 2005

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WRIT PETITION NO : 21892 of 2004

Between:

1.Veera Hanuman Mahila Podupu Sangam, (Regd.No. 101/2003), rep. by its President Ch.Narayanamma, W/o Masthanaiah, aged 45 years, R/o Stambalagaruvu, Guntur.
2.Bhagyanagar Harijana Girijana Parisudhya Mahila Podupu Sangam, (Regd.No. 2137/2004), rep. by its Manager M.Veeraiah S/o Ponnaiah, Aged 35 years, R/o Kandikal Gate, Ashoknagar, Ranga Reddy District.
3.Mahanagara Harijana Parisudhya Mahila Karmika Podupu Sangam, (Regd.No. 2191/2004) rep. by its Manager, Ch. Ramakrishna Prasad S/o Venkateswarulu, 28 years, R/o Lenin Nagar, Saroornagar,Ranga Reddy District.
4.Arunodaya Private Sanitation SC, ST, Mahila Workers Podupu Sanam, (Regd.No. 2352/2004), rep by its Manager, Danda Koteswara Rao S/o Subba Rao, aged 36 years, R/o D.No.131, Nizampatnam, Qutubullapur Mandal, Ranga Reddy District.
5.Sree Venkateswara Mahila Podupu Sagam (Regd.No.4776/ 1998/H2), rep. by its President, N.Vijaya, W/o Perayya, aged 22 years, R/o Stambalagaruvu, Guntur.

..... PETITIONERS

AND

1.Municipal Corporation of Hyderabad, rep. by its Commissioner, Tankbund, Hyderabad.
2.Chief Medical Officer of Health, Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the 1st respondent in not reserving 50% of the total works mentioned in the notification issued by him in No. 1557/S2/Health & Sanitation/MCH/2004-2005 dt.22-11-2004, published in Deccan Chronicle, Hyderabad Edition on 24-11-2004 for entrustment to the DWACUA Groups as illegal, arbitrary, unconstitutional and contrary to Memo No.21778/UBS/2002, M.A. dt.25-12-2002 and consequently direct the 1st respondent to reserve 50% of the total works mentioned in the above said notification for entrustment to the DWACUA groups like the petitioners.

Counsel for the Petitioner: MR.V.SUBRAHMANYAM

Counsel for the Respondents: MR.RAMA RAO GHANTA

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WRIT PETITION NO : 22147 of 2004

Between:

1.Ushodaya Municipal Public Heath Ex Employees Families welfare Association (Regd.No.145/98) rep. by its Manager P.Srinivas Rao, S/o.Malatheswara Rao, R/o.Narasaraopet, Guntur District.
2.Navodaya Parisudhya Sangam (Regd.No.4/2004) rep by its Manager, M.Guru Krishna Vara Prasad, S/o.M. Venkataiah, aged 25 yrs, R/o.Narasaraopet, Guntur District.
3.Ongole Harijana Private Parisudhya Panivarala Sangam, Ongole rep by its President, Anantharapu Veeraiah, S/o.Kotaiah, aged 45 yrs, R/o.Kothapatnam Road, Ongole, Prakasam District.
4.Abhudaya Harijana Parisudhya Panivarala Sangam, Guntur (Regd.No.39/2004) rep by its President, Kornepati Achaiah, S/o.Pedda Yesu, aged 25 years R/o.Stambala Garuld, Guntur.
5.The Harijana Labour Contract Co.op Society, Kakani (Regd.No. Z-723) rep. by its Manager, M.Venkaiah, S/o.Kotaiah, aged 56 years, R/o.Kakani, Narasaraopet, Guntur District.

6.Karimnagar Harijana Girijana Private Sanitation workers welfare Association, (Regd.No.132/2004) rep. by its President, Jekkula Laxmaiah, S/o.Laxmaiah, aged 36 yrs, R/o.Ramnagar, Karimnagar.

..... PETITIONERS

AND

1.Municipal Corporation of Hyderabad, rep. by its commissioner, Tankbund, Hyderabad.
2.Chief Medical Officer of Health Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the tender notification issued by the 1st respondent in No.1557/ S2/ Health & Sanitation/ MCH/ 2004-2005 dt.22.11.2004 published in Deccan Chronicle, Hyderabad Edition on 24.11.2004, is illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.P.GOVIND REDDY

Counsel for the Respondent No.: MR.G.RAMA RAO

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WRIT PETITION NO : 245 of 2005

Between:

1.Arunodaya Harijana Parisudhya Sangham (Regd.No.298/2004) rep. by its Manager, Ch. Peda Babu s/o Subbarao, 30 years.
2.Arunodaya Harijana Parisudhya Panivarala Sangham (Regd.No. 94/2004) rep. by its Manager, T. Suresh Babu, S/o.Brahmaiah, 25 years.
(Both are residents of Kakani Village, Narasaraopet Mandal, Guntur District.)

.....PETITIONERS

AND

1.The Municipal Corporation of Hyderabad, rep. by its Commissioner, Tankbund, Hyderabad.

2.The Chief Medical Officer of Health, Municipal Corporation of Hyderabad, Tankbund, Hyderabad.
3.The Additional Commissioner (H & S), Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the tender notification issued by the 1st respondent in No.1557/S2/Health & Sanitation/MCH/2004-2005 dated
22-11-2004 published in Deccan Chronicle, Hyderabad Edition on 24-11-2004 and corregendum No.1557/S2/H&S/MCH/2004-2005 dt.03-12-2004 published in Eenadu Hyderabad Editiion, as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MRS M.SOBHA KRISHNA

Counsel for the Respondent No.: MR.RAMA RAO GHANTA

The Court made the following:

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COMMON ORAL ORDER:

Since all these petitions are filed questioning the tender notice dated 22-11-2004 issued by the first respondent in these petitions, they are being disposed of by a common order.

2. By the notification impugned in these petitions, Commissioner of the 1st respondent Municipal Corporation, invited applications for Pre-qualification from interested Agencies like Individual Contractors, Firms, Registered Labour Co-operative Societies and Societies and Individuals who happen to be unemployed

and retrenched employees belongs to Scheduled Caste, Scheduled Tribes and Vaddera communities for seasonal works packages for Winter and Summer Months for Cleaning Works and Transport Works in identified localities on contract basis for a period of 7 months with effect from the date of commencement of the contract works. It is notified therein that 15% of the works are reserved, in which 7 works are set apart for allotment to the Sanitary Workers Union as per G.O.Ms.No.30, MA, dated 18-01-2000 and that the remaining works are set apart for allotment to the Co-operative Societies consisting of members of Schedules Caste, Scheduled Tribes and Vadderas and Individuals who happen to be unemployed and retrenched Engineers belonging to Scheduled Caste, Scheduled Tribes and Vaddera Communities.

3. W.P.No.21892 of 2004 is filed by 5 Mahila Podupu Sangams questioning the said notification on the ground that it is not in accordance with memo No.21778/UBS/2002, M.A. dated
25-12-2002 which states that 50% of sanitation and other works would be reserved to DWACUA groups in all Municipalities/ Corporations, even after liquidation of the loans taken by them and that those DWACUA assisted units shall be given a priority in allotment of the privatized sanitation/total sanitation work. W.P.Nos.22147 of 2004 and 245 of 2005 are filed on the ground that the tender notification is not in accordance with the Rule 14(2) of the Municipal Corporation of Hyderabad Tender Rules, 1970 (the Rules).

4. The main contention of the learned counsel for the petitioners in W.P.No.21892 of 2004 is that since the Memo No.21778/UBS/2002 dated 25-12-2002 clearly states that 50% of the privatized sanitation/total sanitation work has to be given to DWACUA assisted units, and since the tender notification does not show that DWACUA assisted groups are eligible to participate in the tender and since no reservation, as contemplated by the memo issued by the Government in pursuance of the power vested in it by Section 679-E of the Hyderabad Municipal Corporation Act, 1955 (the Act), which the Commissioner of first respondent Corporation is

bound to follow, is notified in the impugned tender notification, the same is liable to be quashed.

5. The contention of the learned counsel for the petitioners in W.P.Nos.22147 of 2004 and 245 of 2005 is that since Rule 14(2) of the Rules lays down that clear one month's notice should be given in tenders and since no such time is given in the impugned tender notification the same is liable to be quashed. He placed strong reliance on **P.SREERAMA REDDY v. COMMR. RAJAHMUNDRY MUNICIPALITY** in support of the said contentions. It is also his contention that since the impugned notification is not in accordance with Rules 4(1) and 11(2) of the Rules, the notification is liable to be quashed. He took an additional ground, not mentioned in the petitions, that petitioners who fall under the reserved category were allowed to participate in the reserved category only and were not allowed to participate in the open category also and hence, relying on the observation in **LOHMAN CASTINGS PRIVATE LIMITED v. A.P. STATE ELECTRICITY BOARD, HYDERABAD** reading:

> "It is true that it is nobody's right to insist that the Government should contract with him, but at the same time, the State and State authorities and the instrumentalities of the State while parting with their largesse are under a constitutional obligation cast on them by virtue of equality clause of Article 14 of the Constitution to throw open the opportunity to all eligible persons to compete for award or grant of the contract, and this right flowing from Article 14 of the Constitution cannot be denied to a person by arbitrary action or in violation of principles of natural justice."

contended that since the petitioners in these two writ petitions are not allowed to participate in the open competition, appropriate directions to permit the petitioners to participate in open competition may be given. The learned counsel placed strong reliance on the orders dated 13.04.2004 in W.P.M.P.No.6516 and 6517 of 2004 in W.P.No.4986 of 2004, where a direction was given to the first respondent to issue tender forms in respect of unreserved works of the tenders to the petitioners therein, free of cost and permit them to participate in the tenders without insisting for Earnest Money Deposit, and the order dated 30.04.2004 in W.P.M.P.No.11254 of 2004 in W.P.No.4986 of 2004 where a direction was given to the first respondent regarding

“unreserved/open category works, including the 9 reserved posts which are sought to be filled up in open category, if the petitioners had filed any tenders, their cases may also be considered along with other tenderers according to the procedure and existing rules” and contended that petitioners are entitled to participate in the open category works also.

6. The contention of the learned Standing Counsel for the first respondent is that since the memo relied on by the petitioners in the W.P.No.21892 of 2004 has no statutory force and since Section
679-E of the Act empowers the Government to issue directions which are not inconsistent with the provisions of the Act or the Rules made thereunder only, for carrying out the purpose of the Act, the said memo is not binding on the first respondent and in any event since the petitioners in W.P.No.21892 of 2004 are not located in the area of the first respondent and are from Guntur and Rangareddy Districts and since the work to be done relates to employment of labour for cleaning and transportation of garbage within the area of the first respondent from one place to the place of dumping, it would not be possible for the petitioners in W.P.No.21892 of 2004 to carry out the contract and so the petitioners in W.P.No.21892 of 2004 are not entitled to any relief. It is his contention that the time limit fixed in Rule 4(1) of the Rules applies to ‘large contracts’ but not the contracts of this type, which do not involve any special skill, and are contracts which have to be executed by employing labour and hiring vehicles for transport of garbage, and in any event since petitioners in W.P.Nos.22147 of 2004 and 245 of 2005 cannot be said to be prejudiced by less than one month’s notice given in the impugned notification they are not entitled to any relief. He fairly conceded that the reservation fixed in the impugned notification is not in accordance with Rule 11 of the Rules, and stated that necessary steps would be taken and reservation as provided in Rule 11 of the Rules would be followed at the time of finalization of the tenders. It is his contention that the third ground taken by the petitioners in W.P.No.22147 of 2004 and 245 of 2005 has no force because a person cannot have two opportunities to compete in the reservation category and open category and since the orders in the W.P.M.Ps. relied on by the learned counsel for the petitioners are but interlocutory orders, there are no grounds to quash the impugned notification.

7. In reply, the contention of the learned counsel for the petitioners is that since an amount of more than Rs.1,00,000/- would have to be spent per day for executing the works notified in the impugned notification and since a reading in between the lines of Rule 4(1) of the Rules shows that tenders whose cost exceeds Rs.1,00,000/- should be deemed to be 'large contracts', one month's notice is mandatory.

8. I am unable to agree with the contention of the learned counsel for the petitioners in W.P.No.21892 of 2004 that the memo No.21778/UBS/2002 dated 25-12-2002 should be treated as a direction issued under Section 679-E of the Act. It is no doubt true that in the impugned notification, G.O.Ms.No.30 MA dated
18-06-2000 is referred to and is being followed. From the said G.O.Ms.No.30 MA, dated 18-06-2000 it is seen that it is issued to amend the G.O.Ms.No.581 MA dated 06-11-1996, at the request of the A.P. Municipal and Panchayat Workers Federation, Guntur, after examining their demand. As per the said G.O.Ms.No.30 MA dated 18-06-2000 the Municipalities directed to entrust a portion of the sanitation work to the societies formed by the Sanitary Workers Unions, if the other modalities in G.O.Ms.No.581 dated 06.11.1996, are satisfied, without the necessity of their participating in the tenders and that that facility is being provided with a view to improve the efficiency of sanitation. G.O. is different from a memo and so a memo does not have the same status as a G.O. If the intention of the government was to make some amendments to G.O.Ms.No.30 MA dated 18.06.2000 they would have amended the said G.O. itself, instead of issuing a memo. As rightly contended by the learned Standing Counsel for the first respondent, since the memo dated 25.12.2002 cannot be said to have been issued to carry out the purpose of the Act, but is a mere administrative instruction, first respondent's failure to follow the same cannot be a ground to quash the impugned notification.

9. The above apart, I see nothing in the impugned notification which would prohibit any of the petitioners in W.P.No.21892 of 2004 submitting their tenders. It should be

noted that it is not the case of the petitioners that they sought for and were denied the tender papers. Had the petitioners sought for tender forms and if it was refused to be given to them on the ground that they are not eligible to bid in the tender, petitioners can be said to have a cause of action to raise the above contention. It should be noted that by the impugned notification, first respondent invited applications for

Pre-qualification from interested agencies. The use of the word “like” in the sentence reading “like Individual Contractors, Firms, Registered Labour Co-operative Societies and Societies and Individuals who happen to be unemployed and retrenched employees belongs to Schedule Caste, Schedule Tribes and Vaddera Communities” cannot be taken or read as “only from”. Therefore, Firms, Co-operative Societies etc. used in the impugned tender notification relates to some of the categories which can participate in the tender and cannot be construed to mean that others apart from the categories mentioned therein are not eligible to participate. For that reason, and for the reason that the memo does not have a statutory force, I find no merits in W.P.No.21892 of 2004 and so the same is dismissed.

10. The first contention of the learned counsel for the petitioners in W.P.Nos.22147 of 2004 and 245 of 2005 relates to the time granted in the impugned notification. In **P.SREERAMA REDDY** case (1 supra) a tender notification was set aside on the ground that 15 days clear notice as contemplated by the note under Clause (iii) of Sub-rule (2) of Rule 4 of Andhra Pradesh Municipalities Tender Rules, 1967, was not given. The note under Clause (iii) of sub-rule (2) of Rule 4 of A.P. Municipalities Tenders Rules, 1967, reads:

> “Note:- A minimum period of at least 15 days from the date of publication of the notice at the office of the council, or incases falling under clause (b) of sub-rule (1) of the first advertisement in a news paper shall be allowed for the submission of tenders. If the fifteenth day happens to be a holiday the tenders received on the next working day shall be treated as having been received in time”.

As per clause (b), referred to in the above note, if the cost of the tender exceeds rupees one lakh, the advertisement has to be made at least in one news paper circulating in the District and in the State. Therefore, as per the A.P. Municipality Tender Rules, 1967, if the cost of the tender exceeds rupees one lakh it has to be

advertised at least in one news paper in the District and State granting at least 15 days clear notice.

Whereas Rule 4(1) of the Rules, reads:

> "Tenders in sealed covers shall be invited in the most open and public manner possible.
>
> Notice calling for tenders shall invariably be published in important local news papers having wide circulation at least in the State of Andhra Pradesh in respect of all works.
>
> In case of large contracts, the last date of receipt of tender should be at least one month after the date of first advertisement or notice. The paper for publication has to be made in respect of works whose costs exceed rupees one lakh as per note of IV of para 154 of the Andhra Pradesh Public Works Department Code."

Since Rule 4(1) of the Rules is not in parameteria with Rule 4 of the A.P. Municipalities Tender Rules, 1967 and since one month's notice is contemplated only in case of 'large contracts' by Rule 4(1) of the Rules and since 15 days notice is contemplated by A.P. Municipalities Tender Rules, 1967, in case of contracts exceeding one lakh ruppes which has to be published in papers, and in case of tenders which are published at the office of the Council, the ratio in **P.Sreerama Reddy** case (1 supra) does not apply to the facts of the case, more so because 'Large contracts' are not defined in the Rules and since 'Large' as per the Concise Oxford Dictionary (9th Edition) means "(1) of considerable or relatively great size or extent (2) of the larger kind (3) of wide range; comprehensive (4) pursuing an activity on a large scale" and since the purpose for which the impugned notification is issued is cleaning and transportation of garbage from one place to another place in the areas specified in the localities, which does not require any skill or earlier experience by the tenderer. All these apart, as rightly contended by the learned standing counsel for the first respondent since petitioners in these two writ petitions did submit their tender within the time stipulated, and since it is not their case that they are prejudiced or inconvenienced by the short notice given in the impugned tender notice, the impugned tender notification need not be quashed for not granting one month's notice.

11. With regard to the second contention, that the impugned tender notification is not in accordance with the Rule 11(2) of the Rules, as stated earlier, the learned standing counsel for the first respondent fairly conceded that the same is strictly not in accordance with the Rule 11(2) of the Rules. I also find force in the contention of the learned counsel for the petitioners that the impugned notification is also not in accordance with G.O.Ms.No.30 M.A. dated 18-06-2000, because the said G.O. contemplates reservation for the societies formed by the Sanitary Workers', but not for Sanitary Workers Unions. But that fact may not be of much consequence because what the impugned notification says is that some works are set apart for allotment to the Sanitary Workers Union, as per the Government Orders issued in G.O.Ms.No.30 M.A., dt.18.01.2000. Therefore, while finalizing the tenders received in pursuance of the impugned notification first respondent should keep in view the procedure prescribed by Rule 11(2) of the Rules and finalize the tenders strictly in accordance with the reservation contemplated therein.

12. The additional ground raised by the learned counsel for the petitioners relates to the petitioners in these two petitions being entitled to submit two tenders i.e. one for reserve category and other in the open competition, I find force in the contention of the learned standing counsel for the first respondent that petitioners cannot claim two opportunities. Reservation in tenders also is like reservation in jobs. A person who claims benefit of reservation need submit only one application for the job. He would be considered in the open competition and if he is unable to secure a place in open competition he would be considered in reserved category. The same principle applies for tenders also. If the tenderer is able to secure the work in open competition itself he cannot again be considered for the work reserved for reserved categories. By doing so another society in the reserved category would be losing an opportunity and the same society or individual may corner two works. Since reservation is meant to see that a person who is unable to secure the work in the open competition would have an opportunity of being considered in the reserved category and since the two decisions relied on by the learned counsel for petitioners are interlocutory orders which cannot be taken as precedents, in my considered opinion, petitioners cannot claim double benefit by seeking a right to submit two

tenders i.e. one in the open competition and another in reserved category. In the facts and circumstances of this case, the observation in **LOHMAN CASTINGS PRIVATE LIMITED** (2 supra) relied on by the learned counsel for petitioners has no application to these cases.

13. In view of the above, I dispose of the Writ Petition Nos. 22147 of 2004 and 245 of 2005 with a direction to the respondents to finalize the tenders strictly in accordance with the Rule 11(2) of the Rules. No costs.

14. Writ Petition No.21892 of 2004 is dismissed. No costs.

(C.Y.Somayajulu, J.)

Dt.04.02.2005

Cvrk

..... REGISTRAR

To

1.The Commissioner, Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

2.The Chief Medical Officer of Health, Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

3.The Additional Commissioner (H & S), Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

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